1986

County Board of Equalization of Salt Lake County, State of Utah v. Nupetco Associates : Brief of Respondent

Utah Supreme Court

IN THE SUPREME COURT OF THE STATE OF UTAH

COUNTY BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH, Appellant, vs. NUPETCO ASSOCIATES, Respondent.	Case No. 86-0219 Priority Category 13-a

BRIEF OF RESPONDENT

APPEAL FROM THE DECISION OF THE TAX COMMISSION
OF THE STATE OF UTAH
April 2, 1986

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3. Whether the respondent was denied due process and equal protection of the law by the County Board of Equalization.

4. Whether Salt Lake County waived any rights to reassess the property by accepting payment of the 1984 taxes.

NATURE OF THE CASE

This appeal concerns ad valorum taxation of real property owned by the Nupetco Associates and involves the tax year 1984.

STATEMENT OF FACTS

Respondent Nupetco Associates ("Nupetco") is not satisfied with appellant's statement of the facts, and feels a more detailed explanation will be beneficial to the Court.

The subject property is 9.607 acres in area. (R. 13) In 1983 the subject property was the substantial portion of a ten-acre parcel. (R. 13) A portion of the subject property, 0.393 acres, was taken by condemnation, necessitating a change in the legal description on the County records. (See Findings of Fact, Conclusions of Law and Final Decision of the Utah State Tax Commission, R. 171 to 176, attached in the Addendum as Exhibit A (hereafter "Findings") R. 171.) When the legal

description was being changed by the Salt Lake County Assessor's office, a typographical error occurred whereby the actual 9.6070 acre area was placed in the Assessor's records as 6.607 acres. (R. 14, Findings, R. 172) This occurred approximately April 26, 1983. Nupetco told the assessor's office that the acreage in the tax assessment notice was inaccurate. (R. 23, Findings, R. 172) However, no change was made by the Assessor's office to the acreage attributed to the property on the assessment notice or the tax notice.

The 1984 assessed value of the property was computed by multiplying the acreage listed on the property card of the Assessor's office by the per acre value attributed to the property. (Findings, No. 3, R. 172) The number of acres used to compute the property tax for the 1984 tax year was 6.607 rather than the actual 9.6070. The 6.6070 acres of ground was multiplied by the attributed value per acre of $30,500, arriving at a market value.

Nupetco duly received its tax notice regarding the property involved herein for the year 1984. A copy of the 1984 Valuation and Tax Notice is attached to this Brief as Exhibit B, and appears in the record as Exhibit A to Nupetco's Notice of Appeal to the Utah State Tax Commission, R. 79.

The legal description on the 1984 Valuation and Tax Notice reads as follows:

> Property Description and Location: 7549 S 2160 E
>
> BEG 501.05 FT S & 182.77 FT E FR W 1/4 COR SEC 27, T 2S, R 1E, S L M; S 15°56' E 520.1 FT; S 59°24' E

1151.41 FT; N 0°08' W 387.82 FT; NW'LY ALG CURVE TO R 300 FT; N 55°31' W 710.2 FT, M OR L; N'LY ALG CURVE TO R 309 FT; S 48°59' W 58.56 FT TO BEG. LESS STREET 6.607 AC M OR L.

The Valuation and Tax Notice contained a notice regarding the Board of Equalization which reads in part as follows:

> Appeal over the valuation shown hereon should be filed with the County Board of Equalization on August 23, 24, but in no case later than September 5, 1984. Failure to do so may forfeit the right to relief from excessive or erroneous assessment.

The tax notice contained the entire legal description of the property subject to tax. (R. 21) The County Assessor's office is not able to identify (R. 21, 23) and has not, after proper request, (Answers to Interrogatories, No. 3, R. 148), identified the legal description of any property owned by Nupetco which was not included in the 1984 Valuation and Tax Notice.[1]

In 1984 there were 231,776 separate assessable parcels in Salt Lake County. (Answers to Interrogatories, No. 10, R. 150.) Of those, 5,150 were the subject of action to the Board of Equalization. While the Board of Equalization declined to

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[1] When asked to state the area or acerage of the property described in the 1984 Valuation and Tax Notice on Parcel No. 22-27-306-002-0000, appellants answered 9.607 acres. In addition, when asked to provide a legal description of the property appellant asserted escaped assessment, the answer was 9.607 acres and the original ten acre description. (See Answers to Interrogatories, No. 3, R. 148.)

indicate the number of actions or adjustments made on its, as opposed to the owner's initiative, the Board did indicate the number of parcels or properties reevaluated or reassessed after mailing of the 1984 Valuation and Tax Notice as 1,833. (See Answers to Interrogatories, No. 11, R. 150).

The taxes were paid by Nupetco prior to delinquency in the amount stated on the 1984 Valuation and Tax Notice. (Response to Request for Admissions of Fact, (hereafter "Admissions"), No. 3, R. 138-39) Salt Lake County accepted payment of the 1984 tax assessed on the subject property. (Admissions No. 4, R. 139) No petition for an adjustment was made or taken to the Board of Equalization by the owner, Nupetco Associates. (Admissions, No. 5, R. 139)

Respondent, Nupetco Associates, received a notice (R. 81) regarding a review of the valuation accompanied by a letter dated December 19, 1984 (R. 80), from the Salt Lake County Auditor and Clerk of the Board of Equalization. (Admission, No. 6, R. 139) The letter dated December 19, 1984 is attached in the Addendum as Exhibit C and the Notice regarding review of the property evaluation is attached in the Addendum as Exhibit D. Nupetco Associates did not receive notice that the Board of Adjustment was considering revaluation, reassessment or equalization of the property, prior to receipt of the December 19, 1984 letter. (Admissions, No. 7, R. 139) The letter of December 19, 1984 and the notice which accompanied it did not show the market value on which the adjusted assessed value was based. (See R. 80, R. 81 and R. 41, 42)

Upon receipt of the December 19, 1984 Notice, Nupetco timely filed a Notice of Appeal before the State Tax Commission of Utah. Following an Informal Hearing before a Hearing Examiner, the Tax Commission issued a Decision dated August 13, 1985 (R. 95 to 98), which Decision was adverse to Nupetco. Nupetco timely filed a Petition for Formal Hearing (R. 108) on September 10, 1985. The State Tax Commission issued its Findings of Fact, Conclusions of Law and Final Decision dated April 2, 1986 (R. 171 and Exhibit A of the Addendum). In its Decision, the State Tax Commission held:

> 1. Three acres of the subject property did not escape assessment for the tax year January 1, 1984, but were undervalued.
>
> 2. The action of the Salt Lake County Assessor was improper in assessing the property and giving notice thereon.
>
> 3. The action of the County Board of Equalization denied Petitioner [Nupetco] of due process and equal protection of the law. (R. 174)

The State Tax Commission also found:

> 5. Because the error in the number of acres which resulted in undervaluing the property was discovered subsequent to the time the tax was levied and paid by the Petitioner [Nupetco], the Board of Equalization cannot now go back and assess 3 acres as if they were escaped property. (R. 174)

Nupetco has not stipulated or agreed to any valuation or amount representing the fair market value of the property in 1984. As discussed in Point II, below, Nupetco regards the valuation as irrelevant to the legal issues presented in this appeal.

SUMMARY OF ARGUMENT

Respondent contends the subject property was not escaped property. The Salt Lake County Assessor acted improperly in reassessing the property (following the usual, standard process of assessment of property) and giving notice thereon. The respondent was not provided notice, nor an opportunity to appeal to the Board of Adjustment, as required pursuant to statute. The process adopted by the County Board of Equalization denied respondent due process and equal protection of the law. Finally, the County, having accepted payment of the taxes, waived any right to reassess the property.

ARGUMENT

POINT I. THE PROPERTY WHICH IS THE SUBJECT MATTER OF THIS TAX APPEAL IS NOT ESCAPED PROPERTY.

Utah Code Annotated, § 59-5-17 (1953) reads as follows:

> Any property discovered by the assessor to have escaped assessment may be assessed at any time as far back as five years prior to the time of discovery, and the assessor shall enter such assessments on the tax rolls in the hands of the county treasurer or elsewhere . . . .

Nupetco contends that the subject property is not escaped property.

The 1984 tax notice contains the entire legal description of the property subject to tax. Description means: "[T]he language wherein the property is referred to by metes and bounds or other representation in words." Argyle v. Bonneville Irrigation District, 74 Utah 480, 280 P. 722, 727 (1929).

When property is adequately described, an error in stating the actual number of acres has been held to be immaterial. For example, in Benecke v. United States, 356 F.2d 439 (5th Cir. 1966), the United States brought a suit to acquire lands in Florida by eminent domain. The land to be taken was Tract No. 3446, which was described as "The SE 1/4 of the SW 1/4, except the North 460 feet, in Section 31, Township 21 South, Range 37 East, Brevard County, Florida, containing 15.81 acres, more or less." Id. at 440. Although Tract 3446 had an admitted area of 26.06 acres, the stated 15.81 acreage was held immaterial. The Benecke Court declared: "The area given in deeds and other instruments is generally immaterial where there is an adequate description of the property." 356 F.2d 439, 440 (7th Cir. 1966)(citations omitted).

In the case at hand, since the property was completely and adequately described, the entire property was the subject of assessment, and consequently, none of the property escaped assessment or was escaped property. As in Benecke, the

reference to acreage is surplus. The property was assessed. Assessed property does not fall under the provisions of § 59-5-17.

In Washington, the law requires that the failure to tax must be established by the assessment roll itself before taxes for past years can be imposed. Tradewell Stores, Inc. v. Snohomish County, 418 P.2d 466 (Wash. 1966). In Tradewell, through error, the assessment roll did not show an increased figure for improvements on the land. Subsequent to payment of the taxes, the error was discovered. The Tradewell court held that additional taxes based on the proper evaluation of the improvement, could not be imposed pursuant to RCW § 84.40.080, the Washington statute similar to Utah's § 59-5-48.[2] The Washington court, referring to RCW § 84.40.080, stated that inappropriate valuations may not be increased; the property must have been omitted entirely and this omission must be "evidenced by the assessment rolls." Id. at 467. The court concluded with the following statement:

> The fact that this interpretation allows a taxpayer to escape payment of taxes as a result of error or oversight of the assessor or even because of his inability to keep constantly informed of new construction in his county is unfortunate, but is immaterial. This has long been the law. 418 P.2d 466, 467 (Wash. 1966).

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[2] Utah law appears to be substantially the same. Utah Code Ann. § 59-5-48 (1953) requires the state tax commission to prepare and furnish to each county an assessment book, in which the county assessor of each county must list all property within the county.

The question of whether an incorrect transfer of the appraised value of lands and improvements from the permanent record to the computer, is failing to assess or escape taxation was recently addressed by the Kansas Supreme Court. In Application of Midland Industries, Inc., 236 Kansas 406, 691 P.2d 394 (1984), the court considered whether a reduction in taxes because of a mistake is escaping taxes. The Kansas State Board of Tax Appeals had relied on Kan. Stat. Ann. § 79-417 (Supp. 1983) for its authority to correct the taxing district's clerical errors. Section 79-417, which is similar to thestatute appellant relies on, Utah Code Ann. § 59-5-17 (1953), provides:

> The county clerk in all cases where any lands or improvements located within the county which for any reason have not been assessed for taxation or have escaped taxation for any former year or years when the same were liable for taxation, shall place the same upon the assessment and tax rolls, shall cause the same to be valued by the county appraiser, and shall charge against such lands or improvements taxes equal to and in accordance with the tax levies that would have been charged against such lands or improvements had they properly been listed and assessed at the time they should have been assessed under the provisions of the general laws governing the assessment and taxation of land. No lands or improvements shall be assessed under the provisions of this section to any person other than the present owner unless such property was acquired by will, inheritance or gift. (Italics added.) Id. at 398.

The Kansas Supreme Court determined that since the property had been assessed, the relevant question was whether a reduction in taxes because of a mistake is escaping taxes. The court referred to the definition of escape in Webster's New World

Dictionary 477 (2d Ed. 1974), where "escape" is defined as "to get free; get away; get out.. . ." The court held the term "escaped taxation" means "got free, or got clear" of taxes. Inasmuch as the property was taxed, and was not free of taxes, the Kansas Court concluded a reduction in taxes because of a mistake is not an escape from taxation. "Reduction" is used by the court in a context which appears to mean a tax amount lower than the tax which would have been assessed if the mistake had not occurred.

The Illinois Supreme Court also recently addressed this issue. In Chicago Gravel Co. v. Rosewell, 103 Ill.2d 433, 83 Ill. Dec. 164, 469 NE2d 1098 (1984), due to a clerical error in the assessor's office in copying the acreage of the property as 10.8 acres rather than 70.8 acres, the real estate taxes on the owner's land were reduced. As in this case, there was no error in the township, section, block, parcel or lot description. The assessor's error was a misnumbering of "acres." The court affirmed the lower court's ruling, holding that property which has been assessed, and upon which taxes have been levied and paid in their entirety, even though the assessment through mistake was too low, may not be taxed in a subsequent year.

No cases have been found which hold that an error in an area reference (less than the actual acreage) results in the property being "escaped property."

Applying the law to the facts of this case, appellant's argument that the property escaped assessment within the meaning of § 59-5-17 fails. The legal description on the first 1984 tax notice describes the entire property. The reference to 6.607 acres may not be accurate, but is modified by "more or less" which follows, and, as indicated above, is immaterial. The County Assessor's office is not able to identify the legal description of any property owned by respondent which was not included in the 1984 tax notice. (See Answers to Interrogatories, No. 3, R. 148.) The general principle regarding deeds and instruments affecting real property is that a metes and bounds description prevails over an area reference. Seeders v. Shaw, 200 Ill. 93, 65 N.E. 643 (1902). The same principle applies here. Since the property is described, it was assessed in its entirety. Assessed property is not escaped property. Thus, appellant's argument fails.

Contrary to appellant's argument, the only case cited in its favor, actually is in Nupetco's favor. The Union Portland Cement Co. v. Morgan County, 64 Utah 335, 230 P. 1020 (1924), case suggests, under the circumstance of the assessment of the Nupetco property, that the property was assessed within the meaning of § 59-5-17. In Union Portland Cement the plaintiff taxpayer stated the value of the property he owned in 1921. The state board of equalization assessed the property according to the plaintiff's statement. Later that same year,

evidence showed plaintiff had not included improvements and new buidings, valued at $80,000, which were subsequently assessed by the board of equalization. The plaintiff, notified of the additional assessment, objected and a hearing was set. After the hearing the board reduced the assessment to $60,000. Plaintiff was billed $1,248. Plaintiff argued that all of its taxable property was listed for 1921, assessed, and therefore the additional assessment was without authority. The Court found the property had been omitted from the assessment role and that it was the assessor's duty to assess omitted property.

The Union Portland Cement case is distinguished by its factual differences. For example, in Union Portland Cement the state board of equalization did not have the full legal description of the subject property. The property owner was given immediate notice of the subsequent assessment. In addition, the tax modification was timely made, such that the corrected amount appeared on the tax roll for the subject year. Not one of these facts is present in the case at bar. Union Portland Cement does not stand for the proposition that assessed property, through an error, if not taxed in the correct amount, is subject to adjustment because it escaped assessment. The case stands for the proposition that omitted property is subjected to subsequent assessment. In the present case, the property was assessed. Since the property is not omitted or escaped property, § 59-5-17 does not allow a reassessment or adjusted assessment.

POINT II. THE ACTION OF THE SALT LAKE COUNTY BOARD OF EQUALIZATION WAS IMPROPER IN REASSESSING THE PROPERTY.

Utah law provides in detail the authority and procedure for assessing and taxing real property. Authority for actions and procedures of the County Board of Equalization must be found in the law, through the statutory provisions. Utah law does not contain provisions establishing procedures or authority claimed by appellant.

The County Assessor is to ascertain the names of all taxable inhabitants and all property in the County subject to taxation, before May 15 of each year. Pursuant to Utah Code Ann. § 59-5-4 (1953), the property is to be assessed to the person by whom it was owned on the first day of January of such year at its value on that date. A list of the properties is to be prepared, § 59-5-5, and before the first of June of each year, the County Assessor is to deliver to the County Auditor a statement showing the aggregate valuation of all property, § 59-5-6. The Assessor is to complete an assessment book and deliver the same to the County Auditor before May 15 of each year, along with delivering his affidavit, § 59-5-30.

The county treasurer is given the duty to furnish to the taxpayer by mail "a notice of the kind and valuation of property assessed to him, also notice of the days fixed by the county board of equalization for hearing complaints." Section 59-10-9, Utah Code Annotated. Section 59-10-10 also refers to

the requirement of giving notice to the taxpayer of "the kind and valuation of property assessed to him . . . the days fixed by the county board of equalization for hearing complaints . . ." The 1984 Valuation and Tax Notice satisfied the requirements of these sections, but the notice and letter of December 1984 did not.

Section 59-5-47 confers upon the State Tax Commission the power of equalization. The Tax Commission, on its own initiative, may make an assessment or reassessment of property which it deems to have been overassessed, underassessed, or which was not assessed. The State Tax Commission is statutorily required to give the property owner notice of the time and the place, by letter deposited in the post office at least fifteen days before the date so fixed, of any reassessment. In this case, the respondent was not notified of the subsequent reassessment. Section 59-5-52 requires that any such assessment by the Tax Commission is to be completed by April 1.

The Board of County Commissioners is the Board of Equalization and is required to provide an opportunity for persons aggrieved or dissatisfied with the valuation to appear not later than the 15th day of August, unless otherwise specifically provided. The Board is to continue in session until the business of equalizing is disposed of, but not later than the 1st of September, except as otherwise provided. The County Auditor as Clerk of the Board of Equalization is to

notify the taxpayer in writing of the decision of the Board, including any adjustment in the amount of taxes due on the property resulting from the change in the assessed value. Pursuant to § 59-7-1, any complaints not disposed of or decided by the Board before the first day of September shall be deemed to have been denied. The 1984 valuation and tax notice respondent received contained a special provision regarding filing of an appeal by September 5, 1984. This was past the time allowed by statute, but is not of consequence, other than regarding the Board's powers under § 59-7-2, discussed below, since Nupetco Associates did not complain, seek review, or file an appeal with the Board of Adjustment.

Based upon the provisions of § 59-7-1, the usual basis for consideration by the Board of Equalization is by petition or upon request of the person aggrieved or dissatisfied. However, § 59-7-2 provides that the Board of Equalization has power, after giving notice, to increase or lower any assessment contained in any assessment book so as to equalize the assessment of the property contained therein. No notice regarding consideration of adjusting the assessment was given by the Board of Equalization.

Section 59-7-9 states that all changes, corrections and orders must be completed before the 15th of September, as the County Auditor must file his affidavit indicating all such changes. Section 59-7-10 provides for appeal to the State Commission, and § 59-7-11 provides that all appeals so taken must be decided by October 15.

In the present case, the action of the Board of Equalization does not comply with the requirements of law in the tax statutes. First, the notice and letter of December 1984 did not give the valuation of the property as required by §§ 59-10-9 and 10, Utah Code Annotated. Second, the correction or change was not initiated until after the period of time authorized by statute, or by the specific date shown on the 1984 Valuation and Tax Notice, which provided for challenge to the valuation by September 5, 1984. The auditor's affidavit of changes, under § 59-7-9, would not have included any change in the property involved in this appeal by the required date of September 15. In fact, the decision was not made until December 19, 1984. That procedure did not allow an appeal to the Tax Commission where decision by October 15, is required by § 59-7-11. Third, the Board of Equalization did not comply with the requirement of § 57-7-2 to give notice to the property owner. See Rollins Cablevue, Inc. v. McMahon, 361 A.2d 243 (Del. 1976).[3]

The appellant has previously cited § 59-11-3 and § 59-11-7, as support for its appeal. Section 59-11-3 gives the assessor authority to correct omissions, errors or defects in form in the assessment book. Section 59-11-7 refers to informalities and time prescribed for action by the county.

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[3] The court held that even if cable television was taxable as real property, supplemental assessment was invalid due to failure to meet the statutory notice requirements. The McMahon court stated that statutory notice requirements are, in accordance with the generally accepted rule, mandatory in nature. In the absence of compliance with such requirements, the assessment must be stricken as invalid. Id. at 247. The reasoning of the McMahon court applies to this case as well.

Neither of these sections are relevant in this case, because property which has been undervalued due to a clerical mistake in either the quantity of the property or in the assessed valuation, does not result in property which has escaped valuation.

In summary, (a) the power of the Board of Equalization to assess, reassess, or equalize the assessment on the property lapsed on September 15, and (b) the reassessment or equalization, if otherwise within the authority of the Board of Equalization, is defective and void because no notice was given as required by § 59-7-2.

The State Tax Commission stated in its Findings that there was evidence that there was no dispute as to the per acre value of the property. Nupetco has not had occasion to complain of the value claimed by appellant. First, Nupetco was not given an opportunity to appeal the valuation to the Board of Equalization, the body granted the jurisdiction to hear appeals of valuation. Second, the statutes do not specify the manner in which the assessed value is to be determined, and does not require that property be assessed on a per acre basis rather than as whole, or in some other manner. Until the hearings before the State Tax Commission, Nupetco had no information or knowledge of the manner in which the property was valued by the Assessor. Third, Nupetco has consistently asserted that the County Board of Equalization has no authority to reassess or revalue the property in the manner it has

proceded, and the value is therefore not relevant to the issues before the Court. Consequently, Nupetco has not taken issue with the value, per acre, claimed by appellant.

There is simply no statutory authority for the action or procedure followed by the County Board of Equalization in its attempt to reassess the property. As indicated in Point I, the property did not escape assessment or taxation. Accordingly, the statutory authority on which appellant attempts to rely is inapplicable. Even if the property were escaped property, the property owner should be given notice of the assessment and given an opportunity for hearing before the County Board of Equalization, as are all properties assessed in the normal course. This issue is discussed further in Point III.

POINT III. THE ACTION OF THE COUNTY BOARD OF EQUALIZATION DENIED RESPONDENT OF DUE PROCESS AND EQUAL PROTECTION OF THE LAW.

A fundamental notion of procedural due process of law is the giving of notice to the person to be effected and providing an opportunity to be heard. Section 59-7-2, the statutory authority for the Board's reassessment or equalization, contemplates, and requires, notice prior to the Board's action on assessment or equalization. To satisfy due process requirements, an opportunity to be heard prior to the assessment must be provided.

Article I, Section 7 of the Constitution of Utah provides: "No person shall be deprived of life, liberty, or property, without due process of law." The Supreme Court of Utah has ruled that the order of an administrative body issued without notice to affected individuals violates due process. Morris v. Public Service Commission, 7 Utah 2d 167, 321 P.2d 644 (1958). In Morris, the Public Service Commission considered matters, mainly cancellation of Morris' operating certificate, which were not specified in its notice to Morris. The Supreme Court stated that while there may have been a basis for the Commission's action, the Commission acted beyond its jurisdiction at the hearing because Morris had not been provided notice of the Commission's intention to consider the cancellation of the operating certificate.

The equal protection clause of the Federal and State Constitutions requires that those similarly situated be similarly treated. The action of the Board of Equalization and special selection of this property for review, for reassessment, and failure to provide notice and opportunity for hearing violates the equal protection and due process provisions of the Constitutions of Utah and the United States and renders the action of the Board of Equalization void. In 1984, there were 231,776 separate assessable parcels in Salt Lake County. Of those, 5,150 were the subject of action to the Board of Equalization. The appellant declined to indicate the number of actions or adjustments made on its, as opposed to the

owner's, initiative. Appellant indicated the number of parcels or properties which were reevaluated or reassessed after mailing of the 1984 Valuation and Tax Notice as 1,833.

Respondent was not given the opportunity to appear before the Board of Equalization on the reappraisal and reassessment, to be heard regarding the value of the property, a right afforded to all but 1,833 of the 231,776 parcels in Salt Lake County. Furthermore, appellant was never notified of the market value or assessed value on which the adjusted tax was based. Notice and an opportunity to be heard are fundamental to due process. Since notice and an opportunity to be heard were not provided, the process was unconstitutional in its application to respondent.

POINT IV. SALT LAKE COUNTY WAIVED ANY RIGHTS TO REASSESS THE PROPERTY BY ACCEPTANCE OF NUPETCO'S PAYMENT OF THE 1984 TAXES.

The process of assessment, notice to property owner with the right to object, and payment of taxes is calculated to give the property owner the opportunity to complain or challenge the tax assessment. If no objection is made, and if the Board of Equalization does not reassess or equalize under its authority under § 59-7-2, the property owner may pay the tax. Payment of the tax, based on the tax notice, discharges the obligation of taxes as to the owner and as to the property. In Mammoth City v. Snow, 69 Utah 204, 253 P. 680, 687 (1926) the Supreme Court of Utah stated: "Payment of

taxes, though on an invalid assessment, is a complete defense to another and valid assessment in tax based thereon." There is no contention that the original assessment was invalid. Timely payment of the taxes discharges all liability with respect to the tax obligation.

CONCLUSION

The disputed property was not escaped property. The respondent was not provided notice, or an opportunity to appeal to the Board of Adjustment by the time required by statute. The subject property and its owner, respondent, are being treated differently than the substantial majority of owners and properties in Salt Lake County. After payment has been made, the Board of Equalization does not have the authority to reassess undervalued property. The order of the Utah State Tax Commission should be affirmed.

DATED this 11th day of August, 1986.

MOYLE & DRAPER, P.C.

By Wayne G. Petty
Wayne G. Petty
Attorneys for Nupetco Associates

CERTIFICATE OF SERVICE

I hereby certify that on the _____ day of August, 1986, I served the attached Brief of Respondent by mailing four copies thereof in a securely sealed, postage paid envelope to the following):

Bill Thomas Peters
Special Deputy County Attorney
10 Exchange Place, No. 1000
Salt Lake City, Utah 84111

David Wilkinson, Attorney General
State of Utah
State Capitol Building
Salt Lake City, Utah 84111

I also certify that on the ____ day of August, 1986, I served a copy of the Brief of Respondent by mailing a copy thereof in a securely sealed, postage paid envelope to the following:

Utah State Tax Commission
160 East Third South, Fifth Floor
Salt Lake City, Utah 84111

_____

BEFORE THE UTAH STATE TAX COMMISSION

NUPETCO ASSOCIATES, Petitioner, v. COUNTY BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH, Respondent.	)	FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION Appeal No. 84-18-1600 Serial No. 22-27-306-002

A Formal Hearing was held on this matter on October 23, 1985. James E. Harward conducted the matter with Commissioner Roger O. Tew of the Utah State Tax Commission presiding. Bill Thomas Peters appeared representing the Respondent. Wayne Petty appeared representing the Petitioner.

At the outset the Petitioner requested that the Request for Admissions numbers 1 through 7 and Answers to Interrogatories 1 through 5, 11, 12 and 13 be admitted into evidence. The Petitioner then presented testimony of Helen Watson, Deputy Salt Lake County Assessor of the following:

1. A portion of the subject property was sold necessitating a change in the legal description on the county records.

EXHIBIT A

2. During the change of the legal description a typographical error occurred whereby 9.6070 was transposed into 6.607 acres. This occurred approximately April 26, 1983.

3. The Petitioner subsequently told the county appraiser that the tax assessment notice was incorrect.

4. The evidence was presented that a note was made and the correction process began to take place on the appropriate county record.

5. Another witness testified that the value for ad valorem purposes is computed by multiplying the acreage listed on the building card times the value per acre which value is then used for computing the assessed value and ultimately the tax. The number of acres used to compute the property tax for the 1984 tax year was 6.607 rather than the actual 9.6070.

6. Evidence was further presented that there is no dispute as to the value, per acre, of the ground.

FINDINGS OF FACTS

1. The tax year in question is 1984.

2. The lien date for determination of value for the tax year is January 1, 1984.

3. The lien date of the subject property on the building cards from which value is established for assessment purposes showed 6.6070 acres of ground. The 6.6070 acres of ground was then multiplied by the value per acre of $30,500 arriving at a market value.

4. In reality, the ground was 9.607 acres which resulted in a total of 3 acres which were not multiplied by $30,500 to arrive at the fair market value for January 1, 1984 of the property.

5. Such a clerical error resulted in property which was undervalued.

CONCLUSIONS OF LAW

1. The County has the authority to assess escaped property at anytime within 5 years ending on the date of discovery of the property which has escaped assessment. (Utah Code Ann. § 59-5-17; Union Portland Cement Co. v. Morgan County, 230 P. 1020 (Utah 1924)).

2. The Assessor with the consent of the County Commissioners has the authority to correct omissions, errors or defects in form in the assessment book when it can be ascertained what was intended at any time prior to the sale for delinquent taxes and after the original assessment was made. (Utah Code Ann. §59-11-3 (1953)). Procedures to correct errors, omissions or defects are contained in the Utah Code Ann. § 59-7-1 et seq..

3. Property which has been undervalued due to a clerical mistake in the quantity of the property to be assessed or in the assessed valuation does not result in the property which has escaped valuation. (See, Builders Components Supply Company v. Cockayne, 450 P.2d 97 (Utah 1969); Tradewell Stores

Inc. v. Snowhomish County, 418 P.2d 466 (Wash. 1968); Leyh v. Glass, 508 P.2d 259 (Okla. 1973); People ex. rel. Schuler v. Chapman, 19 N.E.2d 351 (Ill 1939); and Chicago Gravel Company v. Rosewell, 455 N.E.2d 120, aff'd, 469 N.E.2d 1098 (Ill. 1983)).

4. Because this is not escaped property, there has been a failure of the Respondent to comply with the reassessment provisions of the Utah Code.

5. Because the error in the number of acres which resulted in undervaluing the property was discovered subsequent to the time the tax was levied and paid by the Petitioner, the Board of Equalization cannot now go back and assess 3 acres as if they were escaped property.

FINAL DECISION

Based upon the foregoing, it is the Decision of the Utah State Tax Commission that:

1. Three acres of the subject property did not escape assessment for the tax year January 1, 1984, but were undervalued.

2. The action of the Salt Lake County Assessor was improper in assessing the property and giving notice thereon.

3. The action of the County Board of Equalization denied Petitioner of due process and equal protection of the law.

Therefore, the Decision of the Salt Lake County Board of Equalization is reversed.

Appeal No. 84-18 JD

DATED this 2 day of April, 1986.

BY ORDER OF THE UTAH STATE TAX COMMISSION.

ABSENT

Mark K. Buchi
Chairman

R. H. Hansen
Commissioner

Roger O. Tew
Commissioner

Joe B. Pacheco *
Commissioner

* Since the hearing on this case, Commissioner Gary C Cornia has been replaced by Commissioner Joe B. Pacheco. Commissioner Pacheco has been duly advised of the facts and circumstances regarding this case and is qualified to sign this decision.

JEH/lgh/1926w

MAILING CERTIFICATE

I hereby certify that I mailed a copy of the foregoing Decision to the following:

Wayne G. Petty, of
Moyle & Draper, P.C.
600 Deseret Plaza
No. 15 East First South
Salt Lake City, Utah 84111-1901

Robert L. Yates
Salt Lake County Deputy Assessor
Salt Lake City and County Bldg.
Salt Lake City, Utah 84111

Mike Reed
Salt Lake County Deputy Auditor
72 East 400 South, Suite 400
Salt Lake City, Utah 84111

Bill Thomas Peters
Special Deputy County Attorney
10 Exchange Place, No. 1000
Salt Lake City, Utah 84111

DATED this 3rd day of April, 1986.

Secretary

PROPERTY ASSESSED		MARKET VALUE	ASSESSED VALUE
EAL TATE	RESIDENTIAL COM/IND—SEC RES AGRICULTURAL	201,720	32,275
.DINGS	RESIDENTIAL COM/IND—SEC RES AGRICULTURAL		
	MOTOR VEHICLES		
	TOTAL $	201,720	32,275

PARCEL NO
22-27-306-002-0000

MH NO

IMPORTANT INFORMATION
PLEASE READ CAREFULLY
BOARD OF EQUALIZATION

Appeal of the valuation shown hereon sh
be filed with the County Board of Equaliz
on AUGUST 23, 24
but in no case later than September 5, 1984
ure to do so may forfeit the right to relief
excessive or erroneous assessment Ap
must be filed on forms provided by the Co
and may be acquired in Room 306 - City
County Building Real estate and buil
assessments are shown separately within
valuation section when improvements
Please notify the Board of Equalization if
do not appear, when applicable

SEE INSTRUCTIONS ON REVERSE SID

ITY ASSESSED TO

22-27-306-002-0000 1975285

PETTY, NEUMAN C

1680 E 4500 S
SLC, UT 84117

ITY DESCRIPTION AND LOCATION 7549 S 2160 E

S 501.05 FT S & 182.77 FT E FR W 1/4 COR SEC 27, T 2S, R
E S L M; S 15°56' E 520.1 FT; S 59°24' E 1151.41 FT; N 0°
E W 387.82 FT; NW'LY ALG CURVE TO R 300 FT; N 55°31' W
0.2 FT, M OR L; N'LY ALG CURVE TO R 309 FT; S 48°59' W
.56 FT TO BEG. LESS STREET 6.607 AC M OR L.

1984 PROPERTY TAXES

DISTRIBUTION OF GENERAL TAXES		
TAXING DISTRICT	MILL LEVY	AMOUNT
JORDAN SCHOOL DISTRICT	42.65	1,376.53
SL COUNTY GENERAL FUND	13.80	445.40
BOND INT & SINK	.79	25.50
FLOOD CONTROL	3.05	98.44
GOV'T IMMUNITY	.05	1.61
HEALTH DEPARTMT	1.48	47.77
LIBRARY	3.30	106.51
MUNICIPAL SERV	9.38	302.74
HANSEN PLANETAR	.20	6.46
HOGLE ZOO FUND	.52	16.78
CNTY PORTION	1,051.21	
SO S L CO MOSQ ABATE DIST	.17	5.49
S L CO CTTNWD SAN DIST	4.91	158.47
S L CO SERVICE AREA #2	7.00	225.93
CENTRAL UT WATER CON DIST	1.76	56.78

GENERAL TAXES	TOTAL ASSESSED VALUE	32,275
	MILL LEVY	89.06
	GENERAL TAXES	2,874.41
	SANITATION FEE	48.00
	ATTACHED PERSONAL PROPERTY	
	TOTAL TAXES	2,922.41
LESS CREDITS	CIRCUIT BREAKER	
	BLIND ABATEMENT	
	INDIGENT ABATEMENT	
	VETERAN ABATEMENT	
	BOARD ABATEMENT	
	SANITATION ABATEMENT	
	PREPAID TAXES	
	TOTAL CREDITS	

PLEASE NOTE

COUNTY TREASURER ONLY COLLECTS
S DOES NOT ASSESS PROPERTY FIX
ATIONS SET RATES OR GRANT EXEMP
S AND HAS NO AUTHORITY TO MAKE
GES ON THE TAX ROLL

**SE REFER TO BOARD OF EQUALIZA-
INSTRUCTIONS ABOVE IN GREY AREA.**

22-27-306-002-0000 1975285

DELINQUENT AT 12 NOON, NOVEMBER 30, 1984 **1984 DUE→** 2,922.41

State Statutes prohibit the County Treasurer from accepting payment of current years taxes between Noon November 30th and January 2 1985 Payment received between January 2nd and Noon January 15th must include a two percent or $10 minimum penalty After Noon January 15th Interest is charged from the preceding January 1st at the rate defined by State Statute UCA 59-10-26

EXHIBIT B

CRAIG B. SORENSEN
Auditor

F. KENT LUNDQUIST
Chief Deputy

JOHN G. AVERY
Special Assistant
Legal Counsel

December 19, 1984

TO WHOM IT MAY CONCERN:

Enclosed is the decision of the Salt Lake County Board of Equalization on your 1984 Petition for Adjustment of the valuation of the property identified thereon. If you disagree with this decision, you have until January 4, 1985, to file an appeal to the Utah State Tax Commission. An appeal form is provided herein.

The appeal is to be filed with the County Auditor. The County Auditor will forward the appeal along with the official records of the County Board of Equalization to the State Tax Commission. The State Tax Commission will schedule a hearing date and time and notify all parties involved.

Be advised that it is the official policy of Salt Lake County that, where assessments are appealed to the State Tax Commission and/or to the Courts, no penalties and interest will be waived if taxes remain unpaid beyond the due date, January 18, 1985. However, if taxes are paid and the Tax Commission or Courts rule in favor of the appellant, a full refund with interest will be made.

Furthermore, Salt Lake County does not intend to settle for any amount less than that finally determined to be due and owing by the Tax Commission or the Courts.

Very truly yours,

CRAIG B. SORENSEN
Salt Lake County Auditor and
Clerk, Board of Equalization

By: David E Vanier
David E. Vanier
Deputy County Auditor

DEV/jms
Enclosure

#72 East 400 South, 4th Floor, Salt Lake City, Utah 84111 Phone (801) 535-7381

EXHIBIT C

SALT LAKE CITY, UTAH 84111
TELEPHONE: 535-7301

NUPETCO ASSOCIATES

2006 S 900 E
SLC, UT 84105

RE: NOTICE OF DECISION ORDERED BY THE SALT LAKE COUNTY BOARD OF EQUALIZATION ON A REVIEW OF YOUR PROPERTY VALUATION - PARCEL NO. 22-27-300-002-0000

DEAR TAXPAYER:

THIS LETTER IS TO ADVISE YOU THAT PURSUANT TO A REVIEW OF YOUR PROPERTY BY THE BOARD OF EQUALIZATION AND AFTER DUE CONSIDERATION OF THE MATTER, THE BOARD TOOK THE FOLLOWING ACTION FOR THE TAX YEAR 1984:

THE BOARD OF EQUALIZATION ORDERED THE OWNERSHIP OR LEGAL DESCRIPTION OF YOUR PROPERTY CORRECTED RESULTING IN THE VALUATION AS FOLLOWS:

	ORIGINAL VALUATION FROM VALUATION NOTICE	VALUATION AS ADJUSTED BY THE BOARD
REAL ESTATE	$ 32,275	$ 48,825
BUILDINGS, STRUCTURES, ETC.	$ 0	$ 0
MOTOR VEHICLES (ATTACHED)	$ 0	$ 0
TOTAL ASSESSED VALUATION	$ 32,275	$ 48,825

IF, UPON REVIEWING THE ASSESSED VALUATION AND DECISION MADE BY THE BOARD IN RESPECT TO YOUR PROPERTY, YOU ARE NOT SATISFIED AND STILL CONSIDER THAT YOU ARE AGGRIEVED, THEN YOU MAY APPEAL THE DECISION OF THE SALT LAKE COUNTY BOARD OF EQUALIZATION TO THE UTAH STATE TAX COMMISSION BY FILING A NOTICE OF APPEAL IN DUPLICATE WITH THE OFFICE OF THE CLERK OF THE BOARD OF EQUALIZATION WITHIN 30 DAYS AFTER THE FINAL ACTION OF THE BOARD OF EQUALIZATION. SAID APPEAL MUST BE FILED ON OR BEFORE THE 4TH DAY OF JANUARY 1985.

IF YOU HAVE ANY QUESTIONS REGARDING THIS DECISION OR THE PROCEDURE FOR APPEAL, PLEASE CONTACT THE TAX DIVISION, OFFICE OF THE CLERK OF THE BOARD OF EQUALIZATION AT 535-7351. NOTICES OF APPEAL SHOULD BE FORWARDED TO THE ADDRESS SHOWN AT THE TOP OF THIS DECISION.

DO NOT FORWARD YOUR APPEAL FORMS DIRECTLY TO THE UTAH STATE TAX COMMISSION.

VERY TRULY YOURS,

CLERK OF THE SALT LAKE COUNTY
BOARD OF EQUALIZATION

BY: David E. Vanier
DEPUTY CLERK OF THE SALT LAKE COUNTY
BOARD OF EQUALIZATION

THE ABOVE DECISION RESULTS IN THE FOLLOWING ADJUSTED AMOUNT OF TAXES DUE:

1984 PROPERTY TAXES

TOTAL ASSESSED	48,825	
MILL LEVY	88.66	
TOTAL GENERAL TAXES		4,328.25
FEES	18.00	
TOTAL SPECIAL ASSESSMENTS		18.00
ATTACHED PERSONAL PROPERTY		0.00
TOTAL ASSESSMENTS AND TAXES		4,346.25
CIRCUIT BREAKER	0.00	
BLIND ABATEMENT	0.00	
INDIGENT ABATEMENT	0.00	
VETERAN ABATEMENT	0.00	
SANITATION/BOARD	0.00	
PREPAID TAXES	0.00	
		0.00
1984 DUE =		4,346.25
DELINQUENT AT 12:00 NOON NOVEMBER 30, 1984 2% PENALTY		86.93

PLEASE DETACH AND RETURN THIS STUB ONLY WITH TAX PAYMENT
KEEP TOP PORTION FOR YOUR RECORDS

PROPERTY ASSESSED TO:

22-27-300-002-0000 1975285 1984 DUE = 4,454.22

NOTICE: CASH MAILED AT TAXPAYER'S RISK

NUPETCO ASSOCIATES

2006 S 900 E
SLC, UT 84105

REQUEST FOR CHANGE OF MAILING ADDRESS
NAME _____
ADDRESS _____
CITY/STATE _____ ZIP CODE _____
SIGNATURE _____

MAKE CHECKS PAYABLE TO:
ARTHUR L. MONSON
SALT LAKE COUNTY TREASURER
ROOM 306 CITY & COUNTY BLDG
SALT LAKE CITY, UTAH 84111

TAX PAYMENT STUB MUST ACCOMPANY PAYMENT
YOUR CANCELLED CHECK WILL SERVE AS YOUR RECEIPT

EXHIBIT D